

THE STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

HILLSBOROUGH, SS.  
Northern District  
Docket #07-S-0254

APRIL TERM, 2007

The State of New Hampshire

v.

Michael K. Addison

**STATE'S OBJECTION TO THE DEFENDANT'S REQUEST THAT ALL  
STATUS CONFERENCES AND HEARINGS OCCUR ON THE RECORD AND  
WITH THE DEFENDANT PRESENT**

NOW COMES the State of New Hampshire by and through its attorneys, the Office of the Attorney General, and respectfully objects to the defendant's request regarding status conferences and hearings. In support of this objection, the State asserts the following:

1. The defendant has filed a request with the Court asking that "all future status conferences and hearings in this case occur in open court, on the record, and in his presence." The State objects to the defendant's request.
2. The defendant claims that he has a right "to be present at all stages of this proceeding." That claim is overbroad.
3. A defendant has the "right to be present at trial...." State v. Castle, 128 N.H. 649, 651 (1986). However, the defendant does not have an unlimited right to be

present at all other stages of a criminal proceeding. Instead, the right to attend other criminal proceedings is limited to those situations where “the defendant’s presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge.” Id. (citation and internal quotation marks omitted). Therefore, a defendant need only be present “to the extent that a fair and just hearing would be thwarted by his absence.” Id. (citation and internal quotation marks omitted). See also Kentucky v. Stincer, 482 U.S. 730, 745 (1987) (defendant is guaranteed right to be present at any stage of criminal proceeding that is critical to its outcome if his presence would contribute to fairness of procedure).

4. In this case, the Court may decide that it is appropriate at times to meet with counsel in-chambers to discuss matters relating to the case, procedural issues, issues of security, matters of law, scheduling, etc. The Court has the discretion to hold such conferences and hearings, consistent with the law outlined above, and the fact that “[t]he trial court has inherent power to control every aspect of the proceeding before it.” State v. Fecteau, 140 N.H. 498, 504 (1995). This is also consistent with the holdings in other jurisdictions. See Morris v. State, 931 So.2d 821, 831-32 (Fl. 2006) (defendant does not have right to be present at every conference at which a matter pertinent to case is discussed or even at every conference with trial judge); Bennett v. State, 631 S.E.2d 402, 405 (Ga. 2006) (defendant’s right to be present at all critical stages of proceedings not violated by absence at bench conference); People v. Perry, 132 P.3d 235, 241-42 (Ca. 2006) (defendant had no right to be present at bench conference; defendant may ordinarily be excluded from conference on questions of law); People v. Andrades, 4

N.Y.3d 355, 362 (2005) (defendant had no right to be present during colloquy between court and attorneys; colloquy involved procedural matters at which defendant could offer no meaningful input); State v. Brooks, 125 P.2d 192, 199 (Wa. 2005) (defendant had no right to attend in-chambers hearing with counsel to address a motion to withdraw); United States v. Gagnon, 470 U.S. 522, 527 (1985) (no constitutional violation where court held in-camera hearing with defense counsel and juror, without defendant present).

5. For all the reasons stated, the defendant does not have an absolute right to be present at all stages of this proceeding. Therefore, there is no basis to grant the defendant's request to hold all pre-trial conferences, status conferences, or any other hearings in open court, on the record, and in his presence.

WHEREFORE the State of New Hampshire respectfully requests that this Honorable Court:

- A. Deny the defendant's request; and
- B. Grant such further relief as may be just and proper.

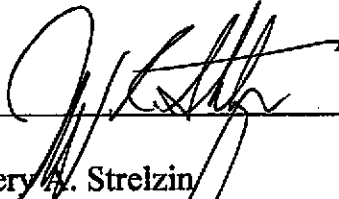
Respectfully submitted,


THE STATE OF NEW HAMPSHIRE


By its attorneys,

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Attorney General

April 2, 2007

  
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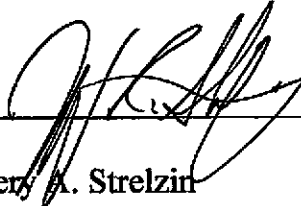
  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this pleading has been sent to Richard Guerriero, Esquire,  
David Rothstein, Esquire, and Donna Brown, Esquire.

April 2, 2007

  
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Jeffery A. Strelzin

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